

Appendix M

Supporting Documentation

Poll Registers Strong Support for Darby Refuge

A recent public opinion poll conducted by The Tarrance Group for The Nature Conservancy examined environmental issues in the state of Ohio, particularly the proposed Little Darby National Wildlife Refuge. The poll was based on telephone interviews with 800 registered voters statewide with an additional oversample of 300 registered voters taken in six Darby watershed counties.

Currently, overwhelming support for the Little Darby Wildlife Refuge proposal exists both statewide and in Central Ohio. More than 7 in 10 voters across the state support such an initiative. Support was even higher in the Darby watershed counties, where 74% support the proposed refuge, including 42% who are strongly in favor.

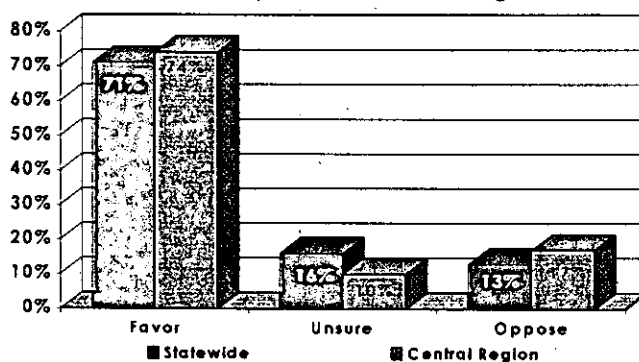
Ohioans are even more likely, 83%, to favor the refuge knowing that it is a once in a lifetime opportunity to save a really special place. They care equally that the proposal offers a natural solution to flooding and improved water quality. Protecting habitat for rare species, preserving farmland, and offering a voluntary option to landowners to sell their land for permanent preservation also attracted the support of over three fourths of Ohioans.

In addition, voters showed a high level of concern regarding environmental issues in general. Ninety three percent of the respondents said that "Protecting the quality of Ohio's streams and rivers" is important.

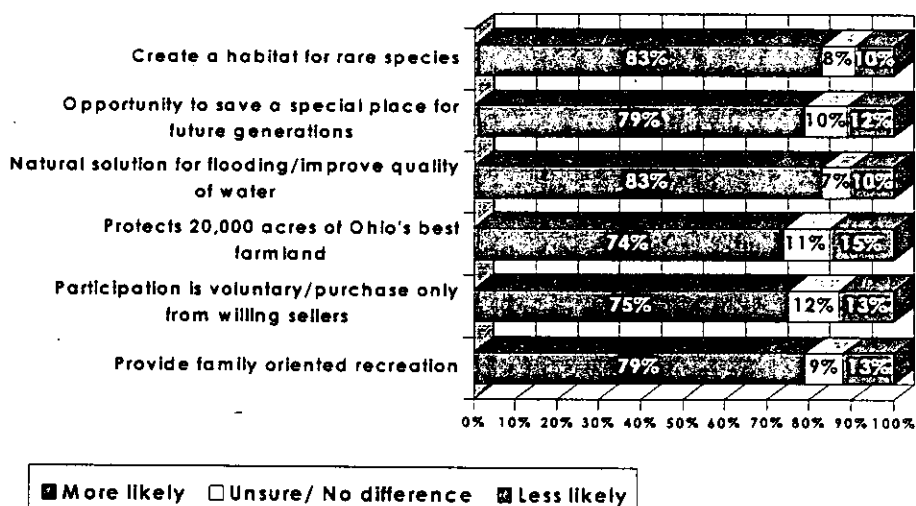
Creating more parks and wildlife refuges and protecting openspace for outdoor recreation were important to more than 85%. Central Ohioans were particularly outspoken in their desire for "more parks, natural areas and recreation areas". Less than a quarter of the population agrees with the statement: "The state owns too much land." Ohio currently ranks 47th in the number of acres per person available for public recreation.

As you may be aware, there is a proposal to create a national wildlife refuge on the Little Darby Creek in the area west of Columbus. The plan would create a 20,000 acre wildlife refuge and protect another 20,000 acres of farmland from development.

Based upon this description, would you favor or oppose the Little Darby National Wildlife refuge?



Would knowing the following make you more or less likely to support the Little Darby Creek National Wildlife Refuge proposal?





U.S. Department
of Transportation
**Federal Aviation
Administration**

Airports District Office
Willow Run Airport, East
8820 Beck Road
Belleville, MI 48111

March 2, 2000

Mr. Bill Hegge
United States Department of the Interior
Fish and Wildlife Service
Ecological Services Field Office
6950 Americana Parkway, Suite H
Reynoldsburg, Ohio 43068-4127

Dear Mr. Hegge:

Proposed Little Darby National Wildlife Refuge

Our office has received your 3/1/00 fax regarding the proposed Little Darby National Wildlife Refuge to be located in Madison and Union Counties in South Central Ohio. Based on the information provided, it appears that the location of the refuge will have no impact on the Madison County Airport in London Ohio.

If you have any further questions regarding this matter, do not hesitate to call me at 313-487-7296.

Sincerely,

Mary W. Jagiello

Mary W. Jagiello
Airport Engineer
Detroit Airports District Office

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MAR - 6 2000

U.S. Fish & Wildlife Service
Reynoldsburg, Ohio

MADISON COUNTY - LONDON CITY HEALTH DISTRICT
13 North Oak Street, London, Ohio 43140
Health Commissioner James E. Herman
740-852-3065

January 19, 2000

To Whom it may Concern:

This letter is for your information regarding the Proposed Darby Refuge.

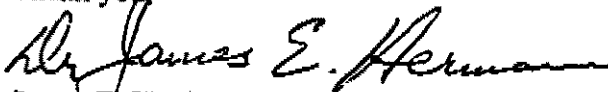
When you create wetlands, swamps and wooded grassey areas, the chances of Diereses spread is increased tenfold. The Wild life population such as deer, raccoon, coyote's, opossum, fox and skunks, etc. would be greatly increased. The following are a list of diseases that would be a danger to the population surrounding these areas.

1. Brucellosis, from deer could cause a problem in our ruminant herd as well as human population.
2. Lyme disease, would increase and cause problems in our K-9 and human population.
3. Tuberculosis
4. E. Coli ,especially children.
5. Leptospirosis, thorough water contamination and could be foodborne.
6. Listeriosis, carried by many bird species and deer.
7. Clostridia / blackleg.
8. Chlamydia / deer.
9. Tularemia, wild animal and insect bites.
10. Ehrlichiosis, deer and tick bites.
11. Q. fever / ticks.
12. Rocky Mountain Fever, from ticks

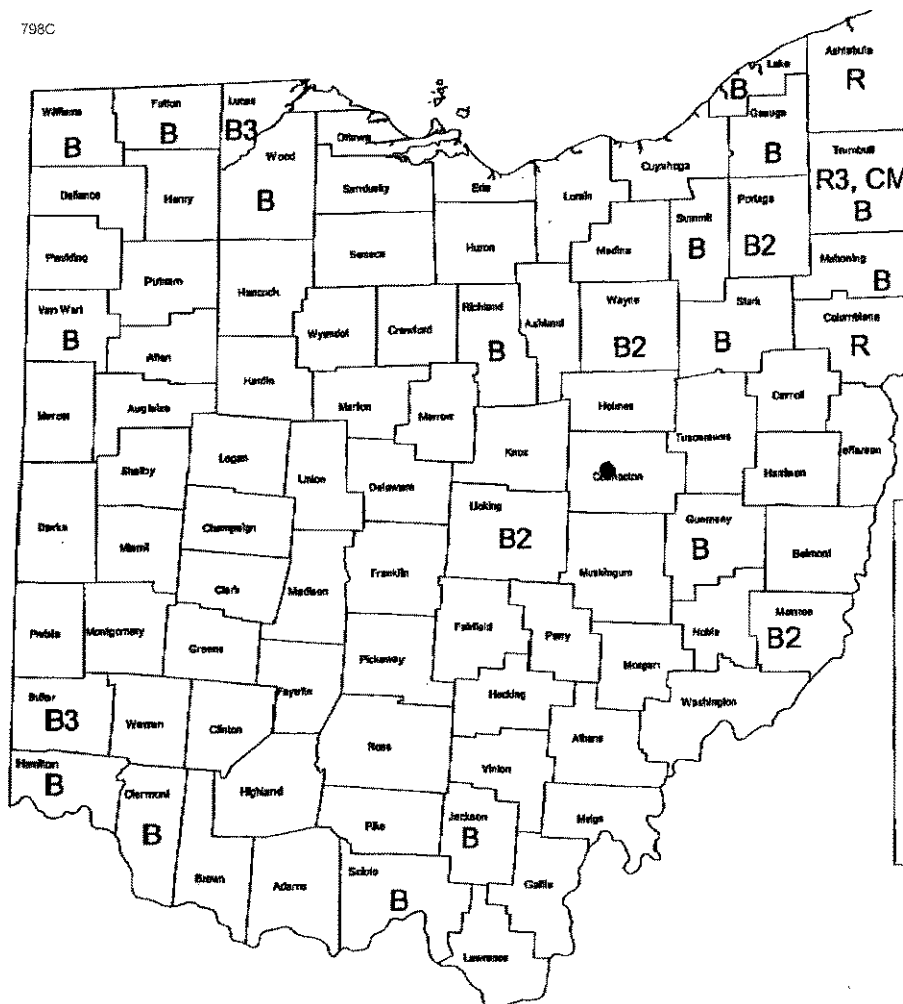
13. Coccidioidomycosis Wetlands.
14. Giardiasis / deer and waterborne
15. Filariasis / raccoon, bear, and mosquitoes
16. Tick paralysis
17. Encephalitis, mosquitoes
18. Hanta Virus / Rodent secretions
19. Rabies, all wild animals especiselly raccoons and skunks

This list is quite large and poses quite a danger to the population areas such as Columi Hilliard, London and West Jefferson.

Thank you

A handwritten signature in cursive script, appearing to read "James E. Herman".

James E. Herman
Health Commissioner



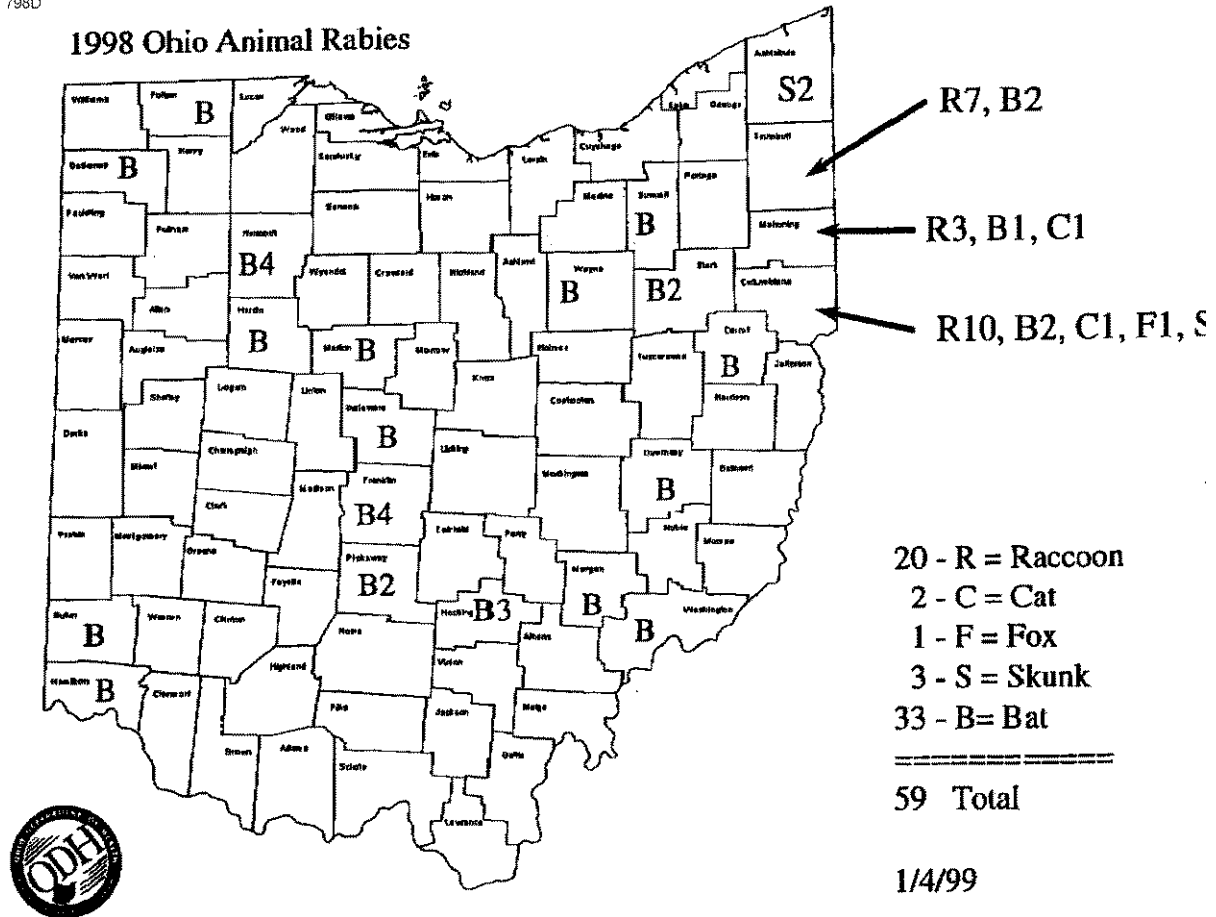
Raccoon Rabies Strain

5 - R - Raccoon
1 - CM - Chipmunk

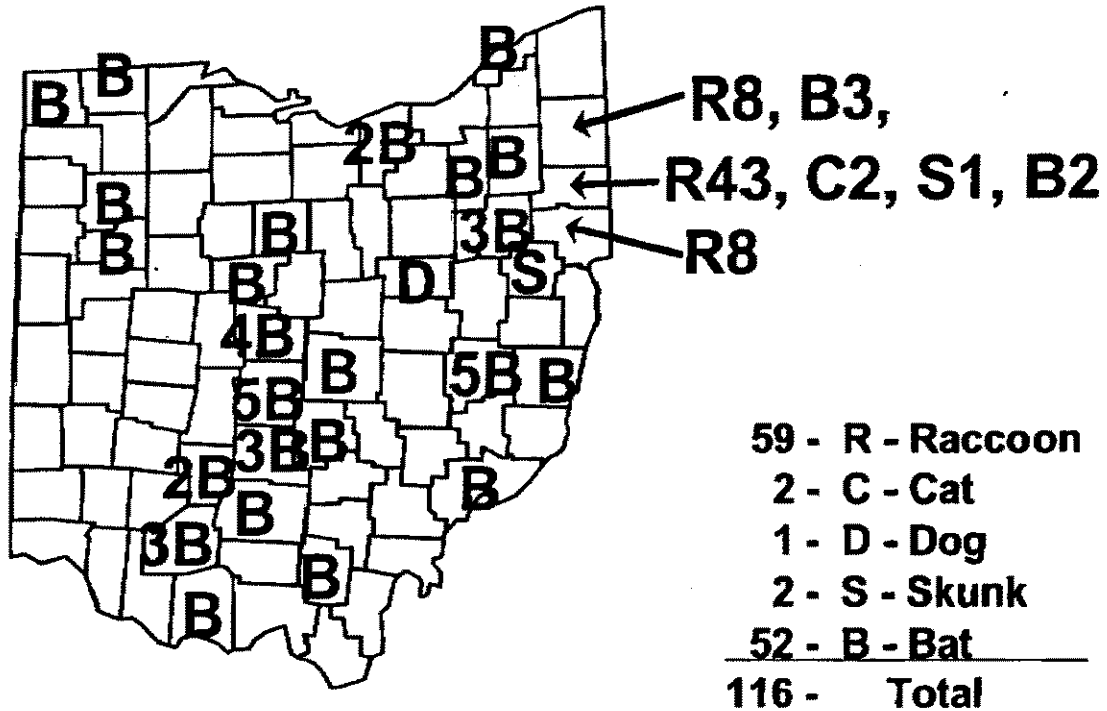
Bat Rabies Strain

30 - B - Bat

1998 Ohio Animal Rabies



1997 Ohio Animal Rabies

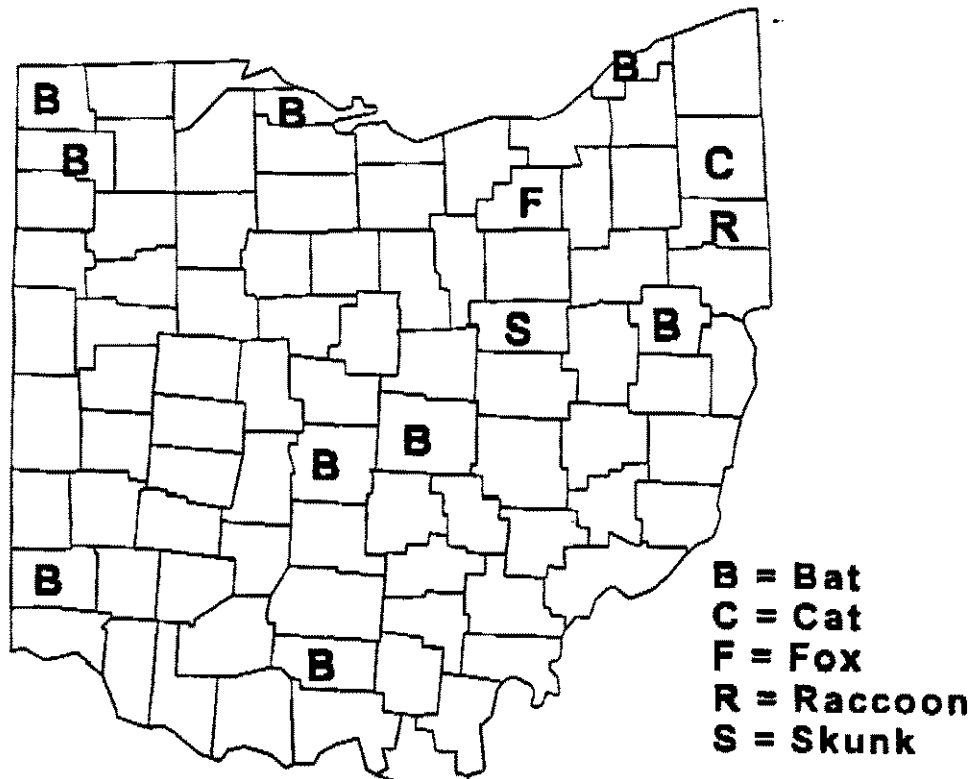


Ohio Department of Health,
Rev. Jan 15, 1998

Ohio Animal Rabies

January 1 - December 31, 1996

Ohio Department of Health

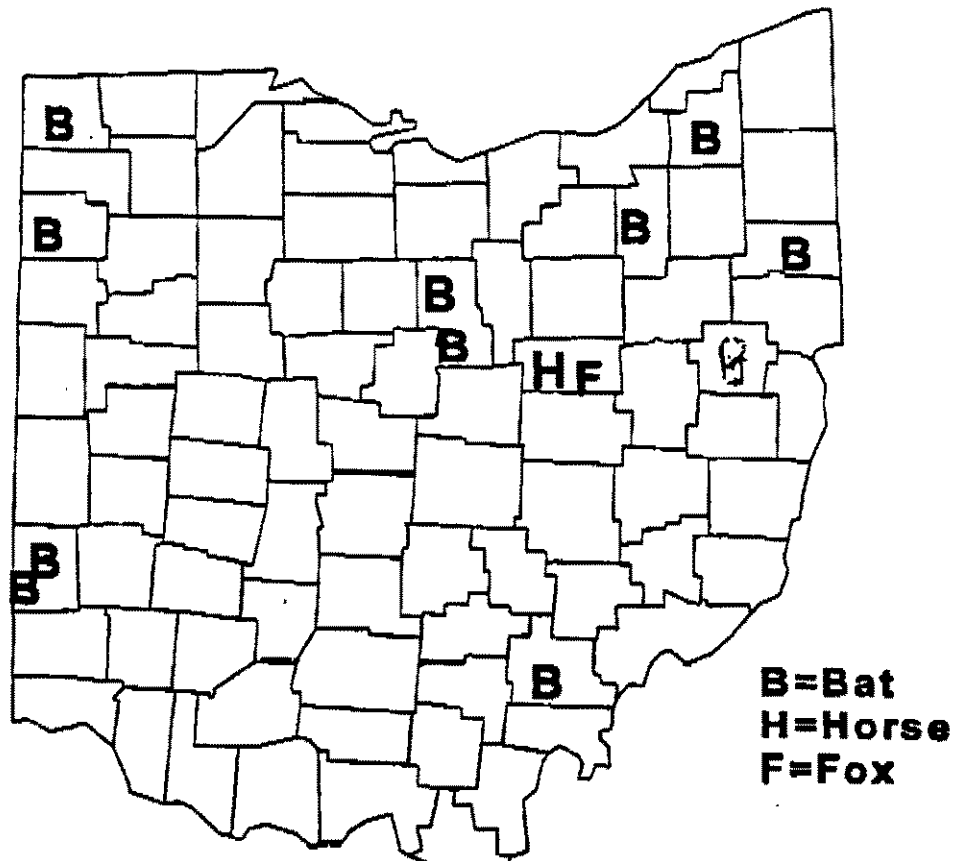


1996 Rabies Line List

1/17	Cat	Trumbull	Recently moved from Pennsylvania. 4 people treated
2/23	Fox	Medina	Unvaccinated Dog Exposed; Dog quarantined
5/8	Bat	Franklin	Volunteer at wildlife rehabilitation clinic bitten
5/21	Raccoon	Mahoning	Dog exposed, boosted & quarantined
7/22	Bat	Licking	Dog exposed, boosted & quarantined
8/12	Bat	Pike	No exposures
8/16	Bat	Defiance	Lady bitten when grabbing bat under bed
8/21	Bat	Carroll	3 unvaccinated farm cats euthanized
8/28	Bat	Williams	Lady bitten while sleeping
9/17	Bat	Lake	Vaccinated dog exposed, boosted & quarantined
10/8	Skunk	Holmes	No exposures
10/31	Bat	Butler	Vaccinated dog exposed, boosted & quarantined
11/12	Bat	Ottawa	2 cats found in basement, boosted & quarantined

January 1 - December 31, 1995

Ohio Department of Health

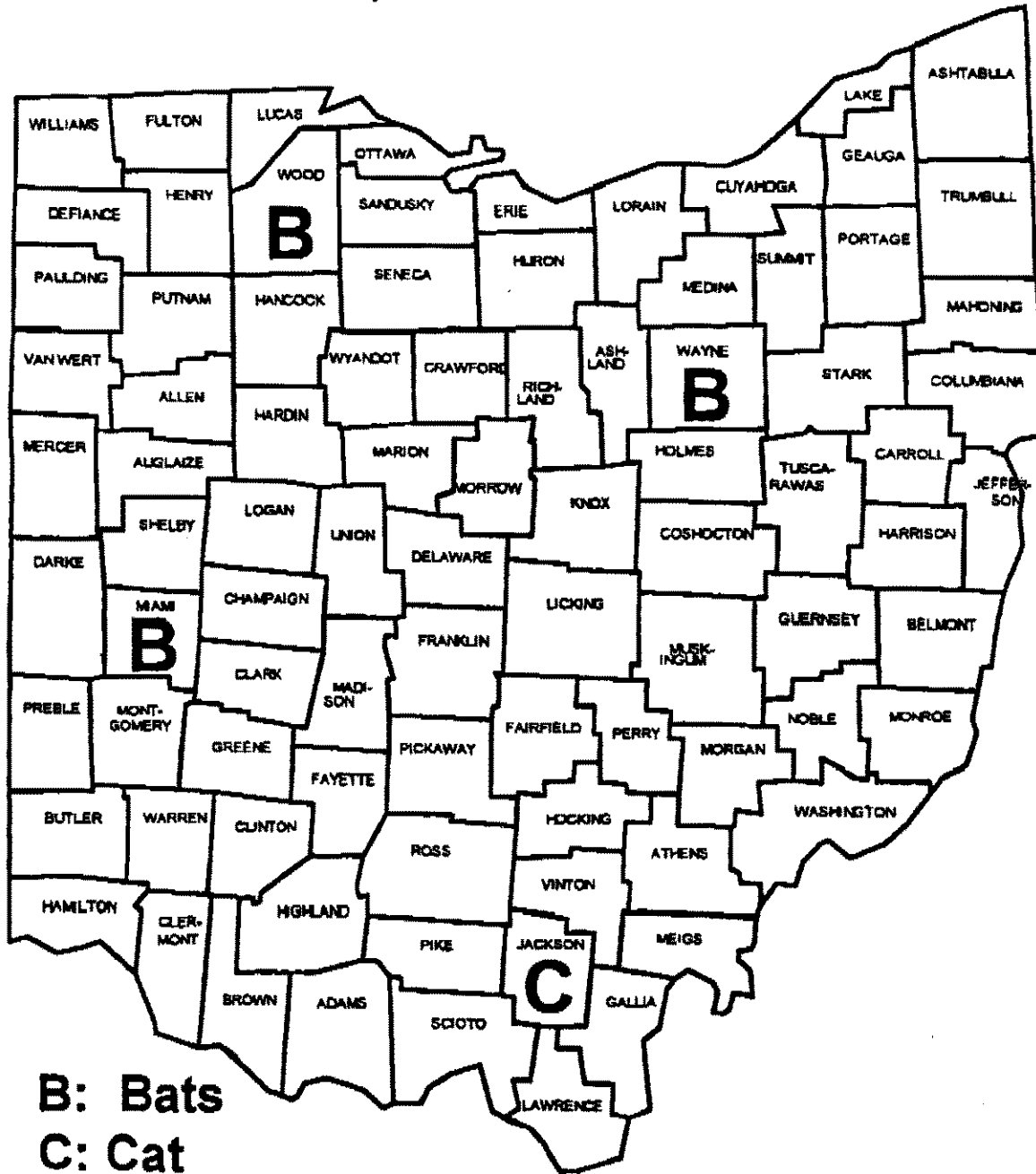


1995 Rabies Line List

1/5	Horse	Holmes	2 people treated, livestock quarantined
6/13	Bat	Summit	No humans or animal exposure
7/12	Bat	Ceauga	13 persons treated
7/20	Bat	Mahoning	1 person treated
8/4	Bat	Richland	1 cat exposed/bitten. No persons treated
8/23	Bat	Williams	Cat exposed and euthanized
8/24	Bat	Athens	1 person treated
24	Fox	Holmes	Fight w/unvaccinated dog. Dog euthanized
9/5	Bat	Paulding	Dog exposed, revaccinated & quarantined
9/11	Bat	Richland	Sick bat found at business, No Exposures
10/12	Bat	Preble	Bat taken to school. 3 people treated. 2 cats euthanized, 1 dog quarantined
10/18	Bat	Preble	Dog exposed, revaccinated & quarantined

1994 Animal Rabies

Ohio Department of Health



1993 ANIMAL RABIES

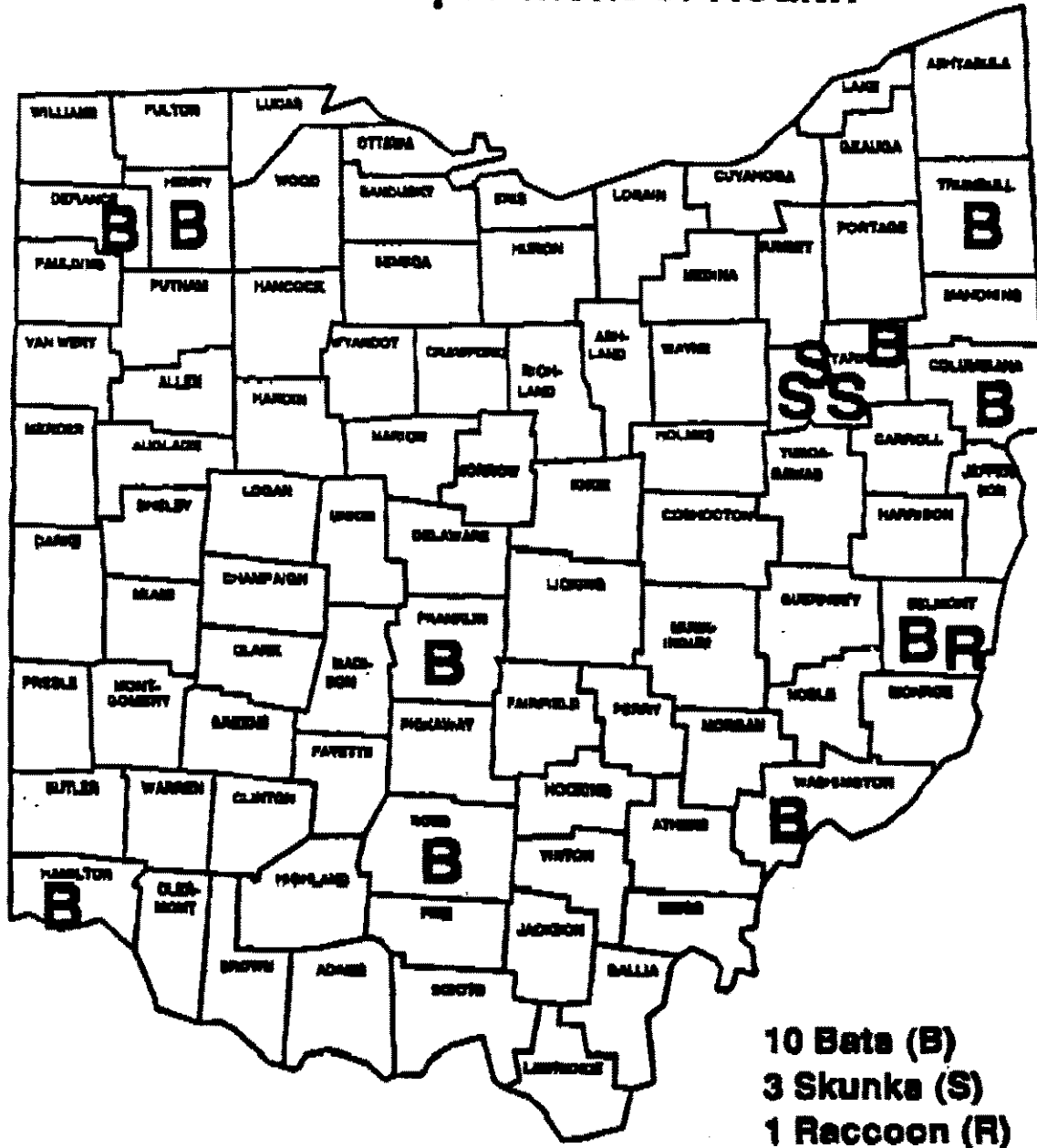
Ohio Department of Health



Total: 6 Bats

1992 ANIMAL RABIES

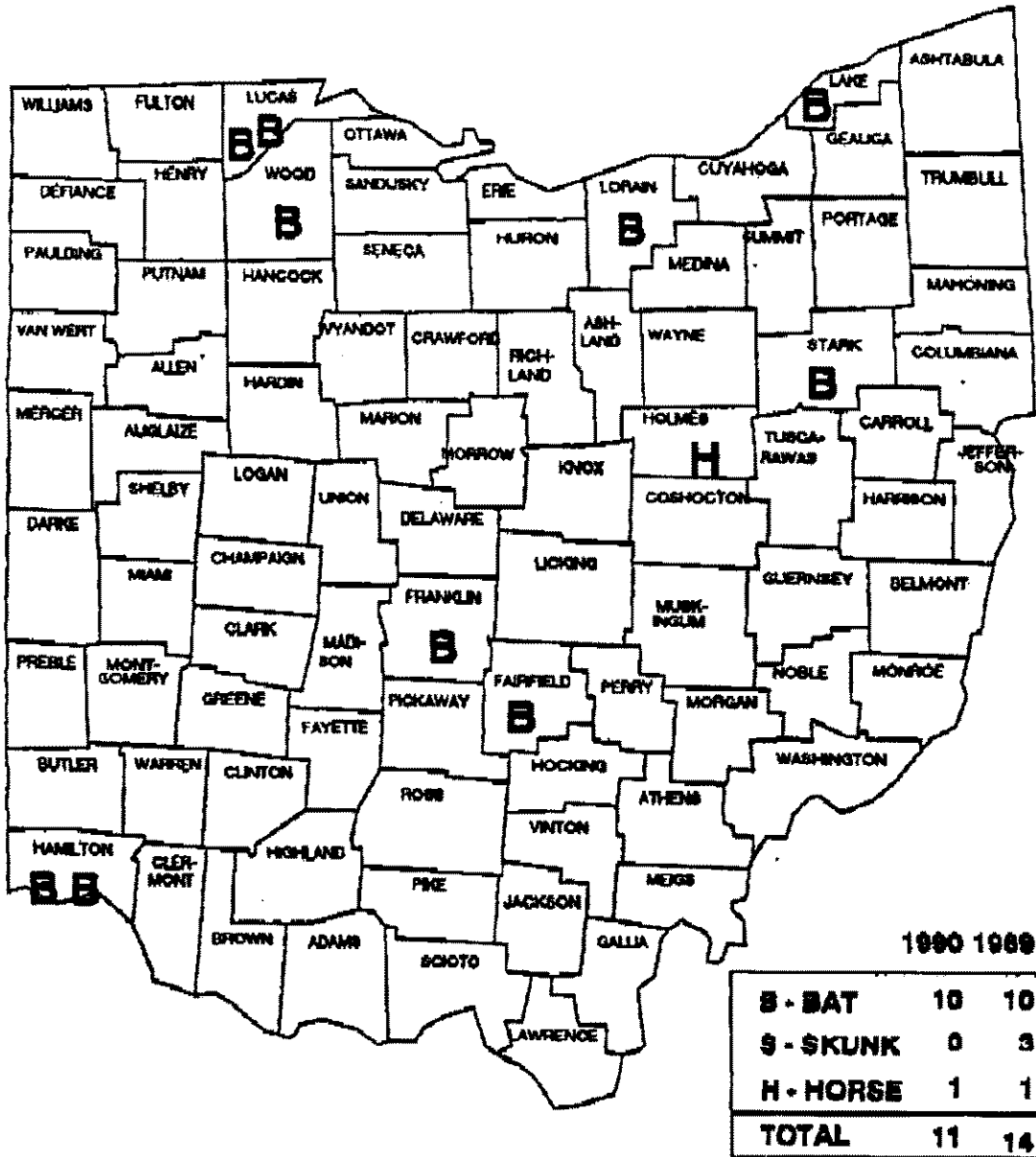
Ohio Department of Health



OHIO RABIES CASES

Ohio Department of Health

January 1, 1990 - December 31, 1990





United States Department of the Interior

U.S. Geological Survey
 National Wildlife Health Center
 6006 Schroeder Road
 Madison, WI 53711-6223

March 21, 2000

Tom Larson
 Chief of Acquisition Planning
 U.S. Fish & Wildlife Service
 Bishop Henry Whipple Federal Building
 1 Federal Drive
 Fort Snelling, MN 55111-4056

Dear Mr. Larson:

The USGS National Wildlife Health Center has been asked by Bill Hegge to provide comments to you regarding human disease risks associated with wildlife from the proposed Darby National Wildlife Refuge in Central Ohio. Specifically, we have been asked to comment on a letter to the Fish and Wildlife Service dated January 19, 2000, from James E. Herman, Health Commissioner from the London City Health District in Ohio.

In his letter, Mr. Herman makes reference to a 10-fold increase in disease spread "when you create wetlands, swamps and woody grassey areas." I am not aware of any published literature, data, or speculation that would substantiate this claim.

Mr. Herman lists 19 different diseases occurring in wildlife that he believes would be a danger to the population surrounding these areas, i.e., the natural areas associated with the Darby refuge. I will briefly comment on each of these diseases below.

Brucellosis in deer: brucellosis is not a disease problem in white-tailed deer in the United States. Wildlife involvement in brucellosis (*Brucella abortus*) is limited to the West, where bison and elk serve as wildlife reservoirs. The risk of this disease to humans or livestock from free-ranging wildlife in Ohio is negligible, and not a serious consideration.

Lyme disease, Rocky Mountain Spotted Fever, and Ehrlichiosis: These tick-transmitted diseases involve terrestrial mammals as reservoirs. The distribution of Lyme Disease and Ehrlichiosis is primarily in the northeastern and Midwestern states (does not include Ohio), while Rocky Mountain Spotted Fever is primarily in the eastern and gulf coast states.

Tuberculosis: Tuberculosis in wild bird (*Mycobacteria avium*) and mammal (primarily *M. bovis*) populations is found in very low levels (prevalence), and has not been associated with increased risk in human populations in the United States. A recent outbreak of tuberculosis in deer in Michigan occurred in a fenced population of white-tailed deer at high densities. Spillover cases of tuberculosis to free-ranging deer and other wildlife species occurred in this area; however this situation was created by the high density of constrained and artificially fed deer, not free-ranging wild deer.

E. coli: The pathogenic form of *E. coli* (*E. coli* 0157:H7) is usually transmitted to humans from contaminated food or water sources. Cattle are considered the primary host of this organism but *E. coli* 0157:H7 has been found in deer in the United States most often where they have been in contact with cattle.

Leptospirosis, listeriosis, and Q fever: While these organisms can be found in free-ranging wildlife, human cases are

primarily associated with spread from domestic animals or food sources, and represent a negligible risk from wildlife.

Clostridia/blackleg: black leg is a non-infectious disease of domestic animals and some wildlife species that is not transmissible to humans.

Chlamydia/deer: Chlamydiosis in deer is not associated with the various forms of chlamydial infections in humans. Chlamydiosis can also be found in birds, and is also known as ornithosis or psittacosis. Human cases of chlamydiosis in birds are primarily associated with imported parrots, though a small number of cases have been associated with wild birds in situations where individuals had close direct contact with wild birds or their excretions. Chlamydial infections can occur in low prevalence in some bird populations, but pose a very low risk to humans through normal recreational activities.

Tularemia: The water-borne form of this bacterial disease (primarily in muskrat and beaver) and terrestrial form (in rabbits) generally occur when populations have exceeded the carrying capacity of the habitat, resulting in epizootic mortality reducing populations. Human cases from exposure to wildlife are generally mild and flu-like in the water-borne form, and more serious in the terrestrial form. The serious cases are primarily associated with recreational use such as trapping and hunting, which results in direct contact between the infected animal and individual.

Coccidioidomycosis: This respiratory disease is caused by the fungus *Coccidioides immitis* found in soils in semi-arid areas in the southwestern United States and is not a significant disease risk in Ohio .

Giardiasis: This illness is one of the most common causes of gastroenteritis in humans caused by the one-celled parasite *Giardia lamblia*. This parasite lives in the intestines of humans and animals. Most outbreaks are attributable to contamination of water supplies by human sewage but the parasite can also be transmitted by drinking contaminated water from lakes, ponds, rivers, streams, or springs contaminated with feces from infected animals.

Filariasis: This disease is an infection with a roundworm parasite whose primary host is the raccoon. Only the raccoon roundworm is known to be transmissible to humans and requires ingesting feces from an infected raccoon. This parasite cannot be transmitted by mosquitoes. The bear roundworm is not known to be a human pathogen.

Tick paralysis: This paralytic disease is caused by a toxin secreted by many species of ticks. People that frequent areas with high tick numbers are at the greatest risk for the disease and preventing tick bites is the only sure way to avoid the disease. The disease is usually reversed with the removal of the tick and if necessary supportive care. It has occurred in eastern and southern states.

Encephalitis: Arboviral encephalitis is a disease of humans that requires the bite of an infected mosquito to transmit one of several viruses that circulate in birds. St. Louis encephalitis is considered endemic (always present) in the state of Ohio and LaCrosse encephalitis occurs sporadically in Ohio (this information from CDC, Arboviral Cases Reported, by Type, United States <<http://www.cdc.gov/ncidod/dvbid/arbor/arbovase.htm>>).

Hantavirus: There are many strains of this virus known to cause human disease. A recently identified hantavirus in the southwestern US causes a severe pulmonary syndrome. This virus is carried by rodents, primarily the deer mouse, and is transmitted to humans through contact with rodent urine, feces, or saliva. Reports of this illness in people have been reported from across the United States although no cases have yet been reported from Ohio. The greatest risk of contact is associated with occupying abandoned or unused cabins that may contain infected rodents or sleeping outside near areas frequented by rodents such as rodent burrows, woodpiles, or garbage areas.

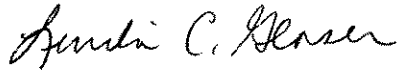
Rabies: There are several variants of rabies, each associated with a different wild mammal reservoir. Raccoon rabies is of particular concern in Ohio at this time as Ohio is trying to prevent the entry of raccoon rabies from the east. Skunk rabies is present in Ohio and has been there historically. There have also been reports of rabies in bats in Ohio.

Of the diseases outlined above that can potentially impact humans, several factors influence the actual risk to people with the creation of a natural area such as the proposed Darby NWR. These factors include: 1) the disease agents already present in central Ohio's wild and domestic animals that may cause human disease, 2) the wildlife populations (including vectors) that may increase in this area and how the increase will affect the presence of disease agents or disease occurrence as a result, and 3) the change or increase in human recreational activities associated

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with the site that will increase human exposure to these disease agents. These factors are difficult to assess but are part of the equation in assessing human risk of disease. Organisms with the potential to cause human disease are present in any habitat and the disease occurrence is dependant on a method of transmission of the disease agent in sufficient quantities to cause disease.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda C. Glaser". The signature is fluid and cursive, with the first name "Linda" being more prominent.

Linda C. Glaser
Wildlife Disease Specialist
USGS National Wildlife Health Center
Madison, WI



United States
Department of
Agriculture

Natural
Resources
Conservation
Service

200 North High Street
Room 522
Columbus, Ohio 43215

RECEIVED

February 22, 2000

FEB 25 2000

Mr. William Hegge
Darby Creek Watershed Project Manager
U.S. Fish and Wildlife Service
6950-H Americana Parkway
Reynoldsburg, Ohio 43068

U.S. Fish & Wildlife Service
Reynoldsburg, Ohio

Dear Mr. Hegge,

Enclosed is 7 CFR, Part 658, of the Federal Register that describes the Farmland Protection Policy Act (FPPA) which the Natural Resources Conservation Service (NRCS) administers. This act allows NRCS to review proposed conversions of farmland to nonfarm uses by Federal agencies and determine the impacts.

You have asked if the proposed Little Darby National Wildlife Refuge would fall within the scope of the FPPA program. Section 658.3(a) discusses the applicability of the program and states "the purpose of the Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses." Your program proposes to convert farmland to wildlife uses by modification to the existing vegetation or removal of artificial drainage to develop wetlands on hydric soils. This does not constitute an "irreversible change of farmland." Therefore, we do not feel that the FPPA program applies to your project.

You also expressed interest in the number of FPPA requests that we receive each year and what agencies had submitted the proposals. During FY-99, our field offices processed 115 requests on approximately 20,000 acres. Of these acres, approximately 3,400 acres of important and unique farmland were converted to irreversible change. The agencies requesting these evaluations included NRCS, Federal Aviation Authority, Rural Development, Farm Service Agency, Environmental Protection Agency, Fish and Wildlife Service, Department of Transportation, Bureau of Land Management, and Housing and Urban Development.

I hope this information answers some of your questions. If you have further questions, please contact Jon Warner, Assistant State Conservationist for Programs, at 614-255-2474.

Sincerely,

KEVIN BROWN
State Conservationist

Enclosure

cc:

(f) "Site" means the location(s) that would be converted by the proposed action(s).

(g) "Unit of local government" means the government of a county, municipality, town, township, village, or other unit of general government below the state level, or a combination of units of local government acting through an areawide agency under a state law or an agreement for the formulation of regional development policies and plans.

§ 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the Act is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Soil Conservation Service (SCS) field office serving the area will provide the assistance. Many state or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4208(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of owners of such land. The Act and these regulations do not provide authority for the withholding of federal assistance to convert farmland to nonagricultural uses. In cases where either a private party or a nonfederal unit of government applies for federal assistance to convert farmland to a nonagricultural use, the federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that could avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the applicant wants to proceed with the conversion, the federal agency may not, on the basis of the Act or these regulations, refuse to provide the requested assistance.

(d) Section 1548, 7 U.S.C. 4209, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any state, unit of local government, or any person or class of persons challenging a federal project,

program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action.

§ 658.4 Guidelines for use of criteria.

As stated above and as provided in the Act, each federal agency shall use the criteria provided in § 658.5 to identify and take into account the adverse effects of federal programs on the protection of farmland. The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects, and assure that such federal programs, to the extent practicable, are compatible with state, unit of local government and private programs and policies to protect farmland. The following are guidelines to assist the agencies in these tasks:

(a) An agency should first make a request to SCS on Form AD 1006, the Farmland Conversion Impact Rating Form, available at SCS offices, for determination of whether the site is farmland subject to the Act. If neither the entire site nor any part of it are subject to the Act, then the Act will not apply and SCS will so notify the agency. If the site is determined by SCS to be subject to the Act, then SCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in § 658.5(a). SCS will respond to these requests within 45 calendar days of their receipt. In the event that SCS fails to complete its response within the 45-day period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

(b) The Form AD 1006, returned to the agency by SCS will also include the following incidental information: The total amount of farmable land (the land in the unit of local government's jurisdiction that is capable of producing the commonly grown crop); the percentage of the jurisdiction that is farmland covered by the Act; the percentage of farmland in the jurisdiction that the project would convert; and the percentage of farmland in the local government's jurisdiction with the same or higher relative value than the land that the project would convert. These statistics will not be part of the criteria scoring process, but are intended simply to furnish additional background information to federal agencies to aid them in considering the effects of their projects on farmland.

(c) After the agency receives from SCS the score of a site's relative value as described in § 658.4(a) and then applies the site assessment criteria which are set forth in § 658.5 (b) and (c),

the agency will assign to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score the agency will be able to identify the effect of its programs on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

(1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.

(2) Sites receiving a total score of less than 160 be given a minimal level of consideration for protection and no additional sites be evaluated.

(3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.

(4) When making decisions on proposed actions for sites receiving scores totaling 160 or more, agency personnel consider:

(i) Use of land that is not farmland or use of existing structures;

(ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;

(iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

(d) Federal agencies may elect to assign the site assessment criteria relative weightings other than those shown in § 658.5 (b) and (c). If an agency elects to do so, USDA recommends that the agency adopt its alternative weighting system (1) through rulemaking in consultation with USDA, and (2) as a system to be used uniformly throughout the agency. USDA recommends that the weightings stated in § 658.5 (b) and (c) be used until an agency issues a final rule to change the weightings.

(e) It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process. Under the agency's own NEPA regulations, some categories of projects may be excluded from NEPA which may still be covered under the FPPA. Section 1540(c)(4) of the Act exempts projects that were beyond the planning stage and were in either the active design or construction state on the effective date of the Act. Section 1547(b) exempts acquisition or use of



United States
Department of
Agriculture

Natural
Resources
Conservation
Service

200 North High Street
Room 522
Columbus, Ohio 43215

February 22, 2000

RECEIVED

FEB 25 2000

Mr. William Hegge
Darby Creek Watershed Project Manager
U.S. Fish and Wildlife Service
6950-H Americana Parkway
Reynoldsburg, Ohio 43068

U.S. Fish & Wildlife Service
Reynoldsburg, Ohio

Dear Mr. Hegge,

Enclosed is 7 CFR, Part 658, of the Federal Register that describes the Farmland Protection Policy Act (FPPA) which the Natural Resources Conservation Service (NRCS) administers. This act allows NRCS to review proposed conversions of farmland to nonfarm uses by Federal agencies and determine the impacts.

You have asked if the proposed Little Darby National Wildlife Refuge would fall within the scope of the FPPA program. Section 658.3(a) discusses the applicability of the program and states "the purpose of the Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses." Your program proposes to convert farmland to wildlife uses by modification to the existing vegetation or removal of artificial drainage to develop wetlands on hydric soils. This does not constitute an "irreversible change of farmland." Therefore, we do not feel that the FPPA program applies to your project.

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I hope this information answers some of your questions. If you have further questions, please contact Jon Warner, Assistant State Conservationist for Programs, at 614-255-2474.

Sincerely,

KEVIN BROWN
State Conservationist

Enclosure

cc:

(f) "Site" means the location(s) that would be converted by the proposed action(s).

(g) "Unit of local government" means the government of a county, municipality, town, township, village, or other unit of general government below the state level, or a combination of units of local government acting through an areawide agency under a state law or an agreement for the formulation of regional development policies and plans.

§ 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the Act is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Soil Conservation Service (SCS) field office serving the area will provide the assistance. Many state or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4206(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or nonfederal land, or in any way affect the property rights of owners of such land. The Act and these regulations do not provide authority for the withholding of federal assistance to convert farmland to nonagricultural uses. In cases where either a private party or a nonfederal unit of government applies for federal assistance to convert farmland to a nonagricultural use, the federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that could avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the applicant wants to proceed with the conversion, the federal agency may not, on the basis of the Act or these regulations, refuse to provide the requested assistance.

(d) Section 1548, 7 U.S.C. 4208, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any state, unit of local government, or any person or class of persons challenging a federal project,

program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action.

§ 658.4 Guidelines for use of criteria.

As stated above and as provided in the Act, each federal agency shall use the criteria provided in § 658.5 to identify and take into account the adverse effects of federal programs on the protection of farmland. The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects, and assure that such federal programs, to the extent practicable, are compatible with state, unit of local government and private programs and policies to protect farmland. The following are guidelines to assist the agencies in these tasks:

(a) An agency should first make a request to SCS on Form AD 1006, the Farmland Conversion Impact Rating Form, available at SCS offices, for determination of whether the site is farmland subject to the Act. If neither the entire site nor any part of it are subject to the Act, then the Act will not apply and SCS will so notify the agency. If the site is determined by SCS to be subject to the Act, then SCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in § 658.5(a). SCS will respond to these requests within 45 calendar days of their receipt. In the event that SCS fails to complete its response within the 45-day period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

(b) The Form AD 1006, returned to the agency by SCS will also include the following incidental information: The total amount of farmable land (the land in the unit of local government's jurisdiction that is capable of producing the commonly grown crop); the percentage of the jurisdiction that is farmland covered by the Act; the percentage of farmland in the jurisdiction that the project would convert; and the percentage of farmland in the local government's jurisdiction with the same or higher relative value than the land that the project would convert. These statistics will not be part of the criteria scoring process, but are intended simply to furnish additional background information to federal agencies to aid them in considering the effects of their projects on farmland.

(c) After the agency receives from SCS the score of a site's relative value as described in § 658.4(a) and then applies the site assessment criteria which are set forth in § 658.5 (b) and (c),

the agency will assign to the site a combined score of up to 280 points, composed of up to 100 points for relative value and up to 180 points for the site assessment. With this score the agency will be able to identify the effect of its programs on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

(1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.

(2) Sites receiving a total score of less than 180 be given a minimal level of consideration for protection and no additional sites be evaluated.

(3) Sites receiving scores totaling 180 or more be given increasingly higher levels of consideration for protection.

(4) When making decisions on proposed actions for sites receiving scores totaling 180 or more, agency personnel consider:

(i) Use of land that is not farmland or use of existing structures;

(ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;

(iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

(d) Federal agencies may elect to assign the site assessment criteria relative weightings other than those shown in § 658.5 (b) and (c). If an agency elects to do so, USDA recommends that the agency adopt its alternative weighting system (1) through rulemaking in consultation with USDA, and (2) as a system to be used uniformly throughout the agency. USDA recommends that the weightings stated in § 658.5 (b) and (c) be used until an agency issues a final rule to change the weightings.

(e) It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process. Under the agency's own NEPA regulations, some categories of projects may be excluded from NEPA which may still be covered under the FPPA. Section 1540(c)(4) of the Act exempts projects that were beyond the planning stage and were in either the active design or construction state on the effective date of the Act. Section 1547(b) exempts acquisition or use of